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No. 90-1126

Supreme Court, U.S.
FILED
JUL 5 1991
OFFICE OF THE CLERK

In The

Supreme Court of the United States

October Term, 1991

BARBARA J. NORMAN, JANICE H. ROBINSON, DONALD PAMON, HELDIA R. RICHARDSON, TOMMY BREWER, CHARLES W. ALEXANDER, DOROTHY C. HOGAN, WILL LAWRENCE, KENNETH G. HOPKINS, R. EUGENE PINCHAM, ROBERT E. PINCHAM, JR., ROBERT E. BROOKS, PERCY V. COLEMAN, VIVIAN D. STEWART-TYLER, JAMES A. DEANS, DINO F. McNEAL, MARY KING CRISS, DAVID T. PERSONS, MELLO SAM H. CLORA, JUDY MARIE HAWTHORNES, CHESTER LeSURE, CELIA DUNCAN, DON C. PASSMORE, JR., and BOBBIE SMITH,

Petitioners,

vs.

DOROTHY REED, VALERIE A. SUTTON, PATTON L. FEICHTER, ERVIN S. RICKS, and DAVID BARRERA; STANLEY T. KUSPER, JR., AURELIA PUCINSKI and ERNESTO D. BORGES, constituting THE COOK COUNTY OFFICERS ELECTORAL BOARD; STANLEY T. KUSPER, individually and as CLERK OF COOK COUNTY ILLINOIS; ARNETT HUBBARD, RAYMOND JAGIELSKI and MICHAEL HAMBLET, constituting the CHICAGO BOARD OF ELECTION COMMISSIONERS,

Respondents.

On Writ Of Certiorari To The Supreme Court Of Illinois

PETITIONERS' BRIEF ON THE MERITS

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QUESTIONS PRESENTED

I

Do the requirements of Sec. 10-2, Ch. 46, Ill. Rev. Stat. 1989, The Illinois Election Code, as construed by the Illinois Supreme Court order of October 12, 1990,

(1) that the Harold Washington Party (HWP) nominating petitions for suburban Cook County Board Commissioners contain the signatures of 25,000 suburban Cook County voters, and

(2) that the HWP nominating petitions for Chicago Cook County Board Commissioners also contain the signatures of 25,000 Chicago voters, a total of 50,000 Chicago and suburban Cook County voters' signatures for these Cook County-wide offices, and

(3) that the HWP nominating petitions for the Cook County-wide offices of State's Attorney, Sheriff, Assessor, Treasurer, Board of Tax Appeals Commissioner, Clerk, Superintendent of Schools, and President of the Cook County Board contain the signatures of 25,000 Chicago and/or suburban Cook County voters, and

(4) that nominating petitions for Illinois statewide offices need only contain the signatures of 25,000 Illinois voters from anywhere within the State

violate the First, Fourteenth and Fifteenth Amendments to the United States Constitution and this Court's contrary rulings in *Moore v. Ogilvie*, 394 U.S. 814 (1969), and *Illinois State Board of Elections v. Socialist Workers Party*, 440 U.S. 173 (1979)?

QUESTIONS PRESENTED – Continued

II

Does Sec. 10-5.2, Ch. 46, Ill. Rev. Stat. 1989, the Illinois Election Code, construed by the Illinois Supreme Court order of October 12, 1990 as prohibiting the HWP, an established political party in the City of Chicago, from using the HWP name in expanding the HWP outside the City of Chicago into Cook County, Illinois, by seeking to nominate (and elect) HWP candidates to Cook County, Illinois elective offices, violate the First, Fourteenth and Fifteenth Amendments to the United States Constitution and this Court's contrary rulings in *Moore* and *Socialist Worker's Party?*

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CITATIONS TO OPINIONS & JUDGEMENTS BELOW

The unreported order and decision of the Cook County Officers Electoral Board (CCOEB) of August 29, 1990 placing the HWP and its candidates on the Cook County, Illinois November 6, 1990 general election ballot appears in Appendix D, pages 25-55 of the Petition for Writ of Certiorari No. 90-1126.[1] The unreported order of the Circuit Court of Cook County, Illinois of September 20, 1990 reversing the decision of the CCOEB and removing the HWP and its candidates from said ballot appears in HWP 90-1126 App. C, p. 15-24. The unreported order of the four (4) majority Democratic Party Justices of the Illinois Supreme Court of October 12, 1990 reversed in part and affirmed in part the decision of the Circuit Court of Cook County and ordered the HWP and its candidates removed from the aforesaid ballot, the three Republican Party Justices dissented in two unreported dissenting opinions in which all three dissenting justices joined and which are set forth in HWP 90-1126 App. B, p. 2-14. Although the Illinois Supreme Court October 12, 1990 majority order twice states that "an opinion {is} to be filed at a later date . . . setting forth the reasons supporting this order," no such opinion has been filed.

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[1] The Petition for a Writ of Certiorari No. 90-1126 was filed herein by the HWP candidates and will hereinafter be referred to as HWP 90-1126, App. and page number.

JURISDICTION

The order of the Illinois Supreme Court, the state court of last resort, removing the HWP and its candidates from the Cook County, Illinois November 6, 1990 general election ballot of which reversal is herein sought, was entered on October 12, 1990. The instant HWP 90-1126 was filed herein on October 19, 1990 as required by 28 USC Section 2101 (c) and United States Supreme Court Rule 13 (1). This Court's jurisdiction is invoked under 28 USC Section 1257 (2) and (3). This Court granted certiorari on May 20, 1991.

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

The First Amendment to the United States Constitution provides:

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievance."

The Fourteenth Amendment to the United States Constitution provides:

> "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The Fifteenth Amendment to the United States Constitution provides:

> "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of race, color, or previous condition of servitude."

Ch. 46, Secs. 10-2 and 10-5.2, Illinois Rev. Stat. 1989, the Illinois Election Code are lengthy and their pertinent texts are set forth in HWP No. 90-1126, at pages 4-5.[2]

STATEMENT OF THE CASE

The members, supporters and voters of the Harold Washington Party (HWP), a Chicago, Illinois political party, are predominantly Chicago, Cook County, Illinois African-Americans and other politically locked out groups and persons. The party was founded and it exists, in part, because of the insults, the disrespect and the denial of reciprocal political empowerment and benefits to these voters by the Chicago Cook County politically controlled Chicago, Cook County Illinois Democratic Party, to which these HWP members, supporters and voters formerly belonged. The HWP was founded and incorporated in Illinois as a political party in 1989. It slated a candidate for Mayor of the City of Chicago in the April 1989 general mayoral election, with nominating petitions which contained the signatures of over 104,000

[2] Sections 10-2 and 10-5 of Chapter 46 Ill. Rev. Stat. 1989, the Illinois Election Code, are the only statutes involved and will be hereinafter referred to simply by the section number.

Chicago registered voters. In the April 1989 Chicago general mayoral election the HWP mayoral candidate received 330,000 straight HWP votes, and a gross total of 428,000 votes. The HWP thereby became an established political party in the City of Chicago, under Section 10-2 of the Illinois Election Code. Although Richard M. Daley, the Democratic Party mayoral candidate won the Chicago April, 1989 mayoral election with a total of 575,000 votes, he received only 295,000 straight Democratic Party votes in said election, 35,000 straight party votes less than the straight HWP votes received by the HWP mayoral candidate. The Republican Party mayoral candidate received less than 40,000 votes, which were less than 5% of the total votes cast in that election, for which reason the Republican Party failed to qualify as an established political party in the City of Chicago under the provisions of Sec. 10-2.

To expand itself as an established political party into Cook County, Illinois, the HWP on August 6, 1990, filed in the office of the Clerk of Cook County, Illinois HWP nominating petitions which contained over 60,000 Chicago and Cook County registered voters' signatures, to place its therein named candidates on the November 6, 1990, ballot for the Cook County, Illinois offices of President Cook County Board of Commissioners, Sheriff, State's Attorney, Assessor, Clerk, Treasurer, Superintendent of Education, Commissioners of the Board of Tax Appeals, suburban Cook County and Chicago Commissioners of the Cook County Board, and Water Reclamation District Commissioners.

Of the 60,000 voters' signatures on the HWP nominating petitions, 44,000 were signatures of Chicago registered voters. About 7,800 signatures were of suburban Cook County (excluding Chicago) registered voters. Approximately 8,000 signatures were of registered voters from both Chicago and suburban Cook County and were the HWP nominating petitions for Water Reclamation District Commissioners only.

On August 13, 1990 verified objections, individually subscribed and sworn to by five (5) Chicago Cook County voters, supposedly civic spirited citizens, Dorothy Reed, Valerie Sutton, Patton L. Feichter, Ervin S. Ricks and Jeanie Barrera, Respondents herein, and 6,000 *"Appendix Recapitulation"* sheets in support of the objections were filed in the Cook County Clerk's office challenging the validity of the HWP nominating petitions and which sought to remove the HWP and its candidates from the November 6, 1990 Cook County general election ballot. (J.A. 6-23)[3]

The objectors' 6,000 *"Appendix Recapitulation"* sheets, numbered 1 through 6,000, were the objectors' purported recapitulations of the corresponding HWP nominating petitions, numbered 1 through 6,000, and they ostensibly specified the alleged defects in each of the 60,000 voters' signatures on the 6,000 HWP nominating petitions. (J.A. 26)

The objectors' verified objections and their intended supporting 6,000 *"Appendix Recapitulation"* sheets alleged

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[3] (J.A. 6-23) refers to the pages of the printed joint appendix, filed herein.

that the HWP nominating petitions were legally insufficient on the grounds that the HWP petitions: 1) Did not contain a judicial slate; 2) Did not contain 25,000 Cook County suburban voters' signatures; 3) Illegally contained the name R. Eugene Pincham, an alleged ineligible candidate; 4) improperly used the HWP name; and 5 & 6) contained illegal, improper, nongenuine signatures of registered and unregistered voters.

The HWP candidates filed with the CCOEB, also a Respondent in HWP 90-1126, motions to strike and dismiss objections one (1) through four (4) on legal grounds, (J.A. 33-53). As to objections numbers five (5) and six (6), i.e., the HWP nominating petitions contained illegal, improper, non-genuine and unregistered voters' signatures, the HWP candidates filed a motion to strike and dismiss these number 5 and 6 objections on the ground, inter alia, that each of the Objectors' 6,000 *"Appendix Recapitulation"* sheets, numbers 1 through 6,000, which ostensibly specified the alleged defects in each of the 60,000 signatures on the HWP nominating petitions, were in fact photostatic-duplicate copies of one and the same original. By reason thereof all of the objector's 6,000 *"Appendix Recapitulation"* sheets asserted that each of the 60,000 signatures on the HWP nominating petitions had the identical alleged defect. The 6,000 *"Appendix Recapitulation"* sheets were therefore prima facie fraudulent and illegal. (J.A. 56-67).

Only one of these photocopied 6,000 *"Appendix Recapitulation"* sheets is included in the joint appendix. (J.A. 26) All 6,000 of these *"Appendix Recapitulation"* sheets however have been transmitted to this Court in the record on appeal.

The CCOEB held an evidentiary hearing on the HWP candidate's motion to dismiss objections numbers five and six, based on the HWP candidate's allegations that the objectors' 6,000 *"Appendix Recapitulation"* sheets were fraudulent.

The uncontradicted direct and cross examination testimony of Bonnie McGuire, a witness for the objectors on said evidentiary hearing before the CCOEB, established that the five objectors' sworn objections were false, and that their challenge to remove the HWP and its candidates from the November 6, 1990 ballot was stealthily instigated by and on behalf of Cook County Democratic Party Chairman, Thomas Lyons, and the Democratic Party's Attorney, Ray Simon, in whose law office the photocopied 6,000 *"Appendix Recapitulation"* sheets were first seen by McGuire, and which were immediately thereafter filed by the objectors' attorney in support of their objections. (Vol. 8, tr 8/22/90, p. 14-103, tr. 8/23/90, p. 8-144)[4]

The undisputed testimony of Bonnie McGuire further established that on August 13, 1990, when the objectors filed their objections, no one had checked or compared any address or signatures on the HWP nominating petitions with any address or signatures of any registered voters on the official voters' registration card, commonly referred to as the binder, and therefore, there could not have been a valid or reasonable determination that the

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[4] (Vol. 8, tr. 8/22/90, p. 14-103) refers to the volume, the date and the pages of the transcript of the proceedings before the CCOEB, transmitted to this Court as a part of the record on appeal.

signatures on the HWP nominating petitions were invalid or not genuine, as stated in the objectors' *"Appendix Recapitulation"* sheets, and additionally, that no one checked with or ascertained from any signatory or any circulator of the HWP nominating petitions, or from any other source, that such signatures were not genuine, improper or unauthentic.

DECISIONS AND PROCEDURAL HISTORY BELOW

Upon conclusion of the evidentiary hearing and arguments of counsel, on August 29, 1990, the CCOEB rendered its written decision. HWP 90-1126 App. D, p. 25-55. The CCOEB's decision overruled the objectors' objections and sustained the HWP candidates' motion to strike and dismiss objections five and six of the objectors' objections, i.e. the HWP nominating petitions contained illegal signatures.

The CCOEB decreed that the use of the HWP name was not improper and sustained the HWP candidates' motion to strike and dismiss that objection, to which one member dissented in part. The CCOEB likewise ruled that R. Eugene Pincham's candidacy on the HWP nominating petitions was valid and sustained the HWP's motion to dismiss this objection. The CCOEB similarly ruled on the failure to slate judicial candidates objection, one member dissenting. The CCOEB upheld the objectors' challenge to the HWP Water Reclamation and Suburban Cook County Board of Commissioners nominating

petitions on the ground that these two nominating petitions lacked the 25,000 voters' signatures, required according to the CCOEB's interpretation of Sec. 10-2.

Thus, the CCOEB held that the HWP nominating petitions for the Cook County offices of President of the Cook County Board of Commissioners, State's Attorney, Assessor, Clerk, Sheriff, Treasurer, Superintendent of Education, Board of Tax Appeals Commissioners and the Chicago Cook County Board Commissioners were valid and the CCOEB certified these HWP candidates to the November 6, 1990 general election ballot. Conversely, the CCOEB ruled invalid the HWP Water Reclamation nominating petitions because they did not contain 25,000 Chicago-Cook County registered voters, signatures, (which ruling is uncontested by petitioners before this Court), and that because the HWP nominating petitions for Suburban Cook County Board Commissioners did not contain 25,000 suburban Cook County registered voters' signatures, said nominating petitions were also invalid, and that the HWP candidates for these two offices would not be placed on the November 6, 1990 ballot.

The objectors did not seek judicial review of the CCOEB's decision which dismissed objections numbered five and six based on their fraudulent *"Appendix Recapitulation"* sheets. The objectors filed a petition in the Circuit Court of Cook County for judicial review of that portion of the CCOEB's decision which dismissed objections numbered one through four, i.e., (1) no judicial slate, (2) the lack of 25,000 Cook County suburban voters' signatures, (3) use of the Harold Washington Party name, and (4) R. Eugene Pincham, an ineligible candidate. The HWP candidates filed a petition for judicial review only of the

CCOEB's decision which struck the HWP candidates for suburban Cook County Board Commissioners from the November 6, 1990 ballot.

On September 20, 1990 the Circuit (Review) Court entered its decision, HWP No. 90-1126 App. C. p. 15-24, removing the HWP and all the HWP candidates from the Cook County November 6, 1990 ballot, on the ground that "the failure to obtain 25,000 signatures for the suburban Cook County Commissioners candidates voids the entire slate of Cook County candidates of the Harold Washington Party."

The HWP candidates appealed to the Illinois Appellate Court. The objectors moved for a direct and expedited appeal to the Illinois Supreme Court, which granted the motion. On October 12, 1990, a majority, the four (4) Democratic Party Justices of the Illinois Supreme Court, strictly along partisan political party lines, entered an order which affirmed the Circuit (Review) Court's decision removing the HWP and its candidates from the November 6, 1990 ballot. HWP No. 90-1126 App. D. p. 2-5. The four (4) majority Democratic Party Illinois Supreme Justices held that Sec. 10-2 required the HWP nominating petitions for suburban Cook County Board Commissioners to contain 25,000 signatures of suburban Cook County registered voters, and that Sec. 10-5 prohibited the HWP from using the name "Harold Washington Party" in expanding from Chicago into suburban Cook County. The three (3) Republican Party Justices of the Illinois Supreme Court dissented, stating that "the majority result in the present case seemingly conflicts with the Supreme Court's decision in *Illinois State Board of Election v. Socialist Workers Party*, supra, which invalidated, on

constitutional grounds, an earlier provision in Sec. 10-2 that effectively required a new party to present more signatures to run a candidate in the City of Chicago than statewide. The majority's construction of the statute produces a similar disparity." HWP 90-1126 App. B. p. 6-14. The HWP candidates petitioned this Court for a Writ of Certiorari which was granted on May 20, 1990.

SUMMARY OF ARGUMENT

1. The CCOEB and the four majority Illinois Supreme Court Justices erroneously interpreted Section 10-2, as requiring the HWP nominating petitions for suburban Cook County Board Commissioner to contain the signatures of 25,000 suburban Cook County voters. Their further interpretation that section 10-2 likewise required the HWP nominating petitions for Chicago Cook County Board Commissioners to also contain an additional 25,000 Chicago voters' signatures mandated that the HWP nominating petitions for these Cook County offices contain 50,000 Chicago, and Cook county voters' signatures, whereas only 25,000 voters' signatures from anywhere within the state are required on the nominating petitions of a new political party for state-wide offices.

These interpretative decisional signature requirements by the CCOEB and the four majority Illinois Supreme Court Justices violate political rights under the First Amendment, equal protection rights under the Fourteenth Amendment, voters' rights under the Fifteenth Amendment and this Court's holdings in *Moore v. Ogilvie*, 394 U.S. 814 (1969) and *Illinois State Board of Elections v.*

Socialist Workers Party, 440 U.S. 173 (1979). These decisions must therefore be reversed.

2. The four majority Illinois Supreme Court Justices' decision that the HWP name was improperly used, and their decision removing the HWP and its candidates from the November 6, 1990 Cook County general election ballot for that reason are totally unsupported by the evidence and are diametrically opposed to the uncontradicted evidence and this Court's holdings in *Moore* and *Socialist Workers' Party*. Said decision must therefore likewise be reversed.

ARGUMENT

I

THE CCOEB AND THE ILLINOIS SUPREME COURT'S DECISIONS THAT SECTION 10-2 REQUIRED THE HWP NOMINATING PETITIONS FOR COOK COUNTY OFFICES CONTAIN A TOTAL OF 50,000 SUBURBAN COOK COUNTY AND CHICAGO VOTERS' SIGNATURES, WHEN ONLY 25,000 VOTERS' SIGNATURES ARE REQUIRED ON NOMINATING PETITIONS FOR STATEWIDE OFFICES, VIOLATE FIRST, FOURTEENTH AND FIFTEENTH AMENDMENT CONSTITUTIONAL RIGHTS AND THIS COURT'S CONTRARY RULINGS IN *MOORE V. OGILVIE*, 394 U.S. 814 (1969) AND *ILLINOIS STATE BOARD OF ELECTIONS V. SOCIALIST WORKERS PARTY*, 440 U.S. 173 (1979).

The four majority Illinois Supreme Court Democratic Party Justices erroneously ruled that Sec. 10-2 required that the HWP nominating petitions for Chicago Cook County Board Commissioners contain the signatures of at least 25,000 Chicago voters, and that the HWP nominating petitions for suburban Cook County Board Commissioners additionally contain the signatures of at least 25,000 suburban Cook County voters. This ruling was patently erroneous, as the two dissenting opinions of the three Illinois Supreme Court Republican Justices convincingly dogmatized. The four majority Illinois Supreme Court Democratic Party Justices further erroneously ordered the HWP and all its candidates for the other Cook County Illinois elective offices removed from the Cook County November 6, 1990 general election ballot, on the ground that the HWP nominating petitions for suburban Cook County Board Commissioners did not contain 25,000 suburban Cook County voters' signatures, and therefore the HWP nominating petition did not contain a full slate of candidates as required by Sec. 10-2.

We initially invite this Court's attention to the unusual and unprecedented circumstances of these erroneous majority rulings. Even though the CCOEB erroneously ruled that Section 10-2 required at least 25,000 Cook County suburban voters' signatures on the HWP nominating petitions for suburban Cook County Board commissioners, the CCOEB nevertheless ruled that this signature deficiency warranted removal of only the HWP candidates for suburban Cook County Board Commissioners from the November 6th ballot, that this signature deficiency did not merit removal of the HWP and all its other candidates for the other elective Cook County offices from said ballot. The HWP candidates appealed to the Cook County Circuit Court that portion of the CCOEB ruling, inter alia, which mandated 25,000 suburban Cook

County voters' signatures on the HWP nominating petitions for suburban Cook County Board Commissioners. The Cook County Circuit Court affirmed the ruling. The objectors appealed that portion of the CCOEB ruling, inter alia, which permitted the other HWP candidates for the other Cook County elective offices to remain on the November 6th ballot, and the Circuit Court reversed this CCOEB ruling.

Both rulings of the Circuit Court, i.e. the 25,000 suburban signature requirement and removal of the HWP and its candidates from the ballot, were appealed by the HWP candidates to the Appellate Court of Illinois. Pursuant to the objectors' motion under Illinois Supreme Court Rule 302 (b), which provides, "After the filing of the notice of appeal to the Appellate Court in *a case in which the public interest requires prompt adjudication by the Supreme Court*, the Supreme Court or a Justice thereof may order that the appeal be taken directly to it", (Italics ours), the Illinois Supreme Court entered the extremely rare order of an expedited direct appeal to that Court. After oral argument the four majority Democratic Party Justices of the Illinois Supreme Court ordered:

> "With an opinion to be filed at a later date: . . . By majority vote of this Court the further holdings of the Circuit Court are affirmed. That section 10-2 requires that a petition to form a new political party contain the above described number of [25,000] signatures from all components of the petition, that is, from the components of Chicago and the suburbs; that because of this failure to comply with Section 10-2 the names of all candidates listed and nominated according to the appellants' petition fail to qualify for placement on the ballot at the general election on November 6, 1990."

The success of the HWP efforts to expand from Chicago into Cook County would adversely impact on the Democratic Party and its candidates in the November 6th elections simply because the HWP candidates would attract voters traditionally taken for granted by the Chicago Cook County Democratic Party from the Democratic Party candidates in that election and possibly cause their defeat. This indeed was the basic reason in the first instance for the Cook County Democratic Party's leaderships' clandestine opposition and objections to the HWP nominating petitions and their surreptitious efforts before the CCOEB to remove the HWP and its candidates from the ballot. Apparently the four majority Democratic Supreme Court Justices recognized this dilemma confronting the Cook County Democratic Party and its candidates. It is apparent that these four Democratic Party Justices were unable to rise above their partisan political party allegiances.

These Illinois Supreme Court majority justices did not rely on, discuss or even cite a single case authority. More importantly, they completely ignored this Court's decision in *Illinois State Board of Elections v. Socialist Workers Party*, 440 U.S. 173 (1979), another Chicago, Illinois election case in which access to the ballot was denied by local election officials and which was reversed by this Court. Even though this Court's decision in *Socialist Workers Party* was repeatedly called to the majority's attention in the HWP brief, the CCOEB brief and by their

attorneys on oral argument, and also by the three dissenting Justices in their two dissenting opinions, the four (4) majority Justices nevertheless chose to ignore it. Such total disregard of an applicable United States Supreme Court decision is unprecedented.

The dissenting opinion of Illinois Supreme Court Justice Ryan, in which Justices Moran and Miller joined, poignantly concludes that the majority "has ignored contradictory and limiting language of Section 10-2 *in order to find that the [HWP] petition did not have the required number of signatures*" (Italics ours). Justice Ryan's dissenting opinion thereafter forcefully proclaimed:

> "In Illinois State Board of Elections v. Socialist Workers Party, 440 U.S. 173 (1979), the Supreme Court stated that restrictions on access to the ballot burden two fundamental rights, the right of individuals to associate for the advancement of political beliefs, and the right of qualified voters to cast their votes effectively . . .
>
> In light of the holding in *Socialist Workers Party*, it is incumbent upon this Court to avoid a narrow and strict construction of the Election Code, which denies the Harold Washington Party candidates access to the ballot."

The dissenting opinion of Illinois Supreme Court Justice Miller, in which Justices Moran and Ryan joined, likewise admonished the four majority justices:

> "The majority's result in the present case seemingly conflicts with the Supreme Court's decision in Illinois State Board of Election v. Socialist Workers Party (1979), 440 U.S. 173."

The minority's admonition went unheeded by the majority. The Illinois Supreme Court majority made no

effort to distinguish *Socialist Worker's Party*. Instead the majority flagrantly disregarded it, disrespected it, defied it, and even disobeyed it.

Additionally, the majority failed to fulfill its twice expressed assurances in its order that "an opinion [would] be filed at a later date," and "an opinion will later be filed setting forth the reasons supporting this order." Even though the Illinois Supreme Court granted the objectors' request for a direct expedited appeal because of the case's "public interest" yet, from October 12, 1990, the date of the majority order, to this date, no opinion has been filed by the majority. This failure to file an opinion is likewise unprecedented.

Section 10-2 however, did not require 25,000 Cook County voters' signatures for Cook County offices, or 25,000 Chicago voters' signatures for Chicago offices, or 25,000 Chicago voters' signatures for Chicago Cook County Board commissioners, and then an additional 25,000 suburban Cook County voters' signatures for suburban Cook County Board commissioners, as the Illinois Supreme Court majority Justices and the CCOEB incorrectly held.

We emphasize that the Illinois Election Code, Ch. 46, Paragraph 10, particularly paragraph 10-2, Ill. Rev. Statue (1989), is a far cry from a model code. The sections of the code are vague, unintelligible, contradictory, uncertain, equivocal, ambiguous and inconsistent. The Chicago Tribune editorial of Sunday, August 26, 1990, Section 4, page 2, pointed out that, "State election laws have too many vagaries." Another Chicago Tribune editorial entitled,

"Make Room for the Washington Party," Tuesday, September 4, 1990, Section 1, page 12, stressed the uncertainties of the Election Code thus, "Illinois case law says that when the election statutes are vague, judges should lean in favor in allowing a candidate on the ballot. That's the way it should be." Rick Bryant, staff writer for the Chicago Southtown Economists, a daily newspaper, in Sunday's, September 30, 1990 edition at page 1, in an article entitled, "3rd Party's impact goes beyond court," stated, *"The Illinois election code is extremely vague. Politicians confess the code was deliberately written this way to give Democrats and Republicans great latitude to challenging third parties."* The Chicago Southtown Economist editorial of September 23, 1990 page A 10, also admits that, "The statutes and case law as they apply to the Washington (HWP) case are far from clear." The Chicago Sun-Times editorial of the same date, page 42, entitled "Rigged laws baffle 3rd parties," expounds, "The rules the [Circuit Court] judge followed are blatantly designed to create a political playing field that allows for only two teams – Democrats and Republicans. In every way imaginable, Illinois election law discourages, dissuades, deters and otherwise disheartens any candidates from outside the established political order. *The law is rigged against independent and third party candidates . . . The sun may rise in the west before the legislature ever corrects this injustice . . . "* (Italics ours).

Section 10-2 is so vague, contradictory, inconsistent and incomprehensible that it defies reasonable, mutually agreed understanding, for which reasons the section violates constitutional due process. The dissenting opinion of Illinois Supreme Court Justice Ryan vividly exclaims

the glaring contradictions, and inconsistencies of Section 10-2 thus:

> "As to the provisions of the Election Code concerning the required number of signatures in a new party's petition, here again the majority of this Court adopted a narrow and strict construction of the language of Section 10-2. *In fact, the provisions of Section 10-2 are contradictory in this regard* . . . The last sentence of the fourth paragraph of Section 10-2 would limit the number of signatures required from all of Cook County to 25,000, whereas the next to the last sentence of the seventh paragraph of Section 10-2 appears to require 25,000 signatures from each component of the county petitions; that is, the City of Chicago and the suburban areas. The last sentence of the seventh paragraph of Section 10-2 does not require that the petition contain 25,000 signatures from all components . . . Instead, that sentence provides: 'the entire petition, including all components,' must be signed by the required number of signatures, so it is the entire petition that must have 25,000 signatures . . . A logical construction would be that the entire petition for the formation of a new party in Cook County must have 25,000 signatures."

The next to the last sentence and the last sentence of the fourth paragraph of Section 10-2, referred to above by Justice Ryan as "limit[ing] the number of signatures required from all of Cook County to 25,000," provide as follows:

> If such new district or political party shall be formed for any district or political subdivision less than the entire state, such petition shall be signed by qualified voters equaling in number not less than 5% of the number of voters

who voted at the next preceding regular election in such district or political subdivision in which such district or subdivision voted as a unit for the election of officers to serve its respective territorial area. *However, whenever the minimum signature requirement for a district or political subdivision new political party petition shall exceed the minimum number of signatures for state-wide general election, such statewide petition signature requirement shall be the minimum for such district or political subdivision new political party petition.*" (Italics ours).

The next to the last sentence of the seventh paragraph of Section 10-2, which conversely, as stated in Justice Ryan's dissenting opinion, "appears to require 25,000 signatures from each component . . . the City of Chicago and the suburban areas", provides:

"Each component of the petitions for each district from which an officer is to be elected *must be signed by qualified voters of the district* equaling in number not less than 5% of the number of voters who voted at the next preceding regular election in such district at which an officer was elected to serve the district." (Italics ours).

But then the very next sentence, i.e., the last sentence of the seventh paragraph of Section 10-2, as pointed out in Justice Ryan's dissent, contrarily, "does not require that the petition contain 25,000 signatures from all components." That last sentence reads thus:

"The entire petition, including all components, must be signed by a total of qualified voters of the entire political subdivision equaling in number not less than 5% of the number of voters who voted at the next preceding regular election in such political subdivision . . . " (Italics ours).

In light of and based upon these aforementioned conflicting provisions of Section 10-2 Justice Ryan aptly reasoned that "a logical construction would be that the entire petition for the formation of a new party in Cook County must have 25,000 signatures." Justice Ryan accurately concluded that "the majority of this Court has read the signature requirements narrowly and strictly and has ignored contradicting and limiting language of Section 10-2 in order to find that the [HWP] petitions did not have the required number of signatures."

Having rightly or wrongly construed Section 10-2 as requiring the HWP nominating petitions for, (1) suburban Cook County Board Commissioner to contain 25,000 suburban Cook County voters' signatures, (2) Chicago Cook County Board Commissioners to contain 25,000 Chicago voters' signatures, and (3) Cook County Sheriff, State's Attorney, Assessor, Treasurer, Clerk, Board of Tax Appeal Commissioners, President Cook County Board of Commissioner and Superintendent of Schools to contain 25,000 Chicago and/or suburban Cook County voters' signatures, these interpretations by the CCOEB and the majority Illinois Supreme Court Justices notoriously violate the HWP candidates, their voters and supporters' (1) political rights guaranteed under the First Amendment, (2) equal protection rights guaranteed under the Fourteenth Amendment, (3) the right to vote guaranteed under the Fifteenth Amendment, and this Court's holdings in *Moore v. Ogilvie*, 394 U.S. 814 (1969), and *Illinois State Board of Elections v. Socialist Workers Party*, 440 U.S. 173 (1979).

The CCOEB, like the four majority Illinois Supreme Court Justices, failed to cite a single case authority in

support of its construction of Sec. 10-2's 50,000 Chicago-Cook County voters' signature requirement. Although, unlike the four (4) majority Justices, the CCOEB did cite *Socialist Workers Party*, simply stating, "In a large county such as Cook, this 5% signature requirement works out to be considerably larger than that required of state-wide candidates. Such an illogical scheme was struck down in *Socialist Workers Party*." Yet, the CCOEB made absolutely no effort to distinguish *Socialist Workers Party*, and offered no explanation for its inapplicability to the case at bar. Thus, the CCOEB and the Illinois Supreme Court's majority decision are unsupported by judicial case authority or any expressed reasoned statutory interpretation.

At the outset, indeed, most worthy of note here is this Court's following language in *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964):

> "No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined."

Likewise, the following language of this Court in *Luben v. Parrish*, 415 U.S. 709, 716 (1974) merits repetition:

> "The interests involved are not merely those of parties or individual candidates; the voters can assert their preference only through candidates or parties or both and it is this broad interest that must be weighed in the balance. The right of a party or an individual to a place on a ballot is entitled to protection and is intertwined with the rights of voters.
>
> 'The right to vote is heavily burdened if that vote may be cast only for one of two parties at a time when other parties are clamoring for a place on the ballot. Williams v. Rhodes, 393 U.S. 23, 31 (1968).' "

This court expressed its affirmance of the inestimable value of the right to vote in *Reynolds v. Sims*, 377 U.S. 533, 555 (1964), thus:

> "The right to vote freely for the candidate of one's choice is of the essence of a democratic society, and any restrictions on that right strike at the heart of representative government. And the right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise."

In *Moore v. Ogilvie*, 394 U.S. 814 (1969), yet another Chicago Election case in which ballot access was again denied, the procedure and issue were strikingly similar to those in the case at bar. In *Moore* the Illinois Election Code required the nominating petitions for independent candidates for the office of election of President and Vice President of the United States to contain 25,000 signatures of Illinois voters, including 200 signatures from at least 50 of the state's 102 counties. The independent candidates' nominating petitions did not contain the signatures of 200 voters from 50 counties. Because of this deficiency the Illinois Election Board refused to certify the independent candidates to the county clerks for the November 1968 election. The Board unsuccessfully urged before this Court in *Moore*, as the objectors in the instant case likewise unsuccessfully urged before this Court, that review by this Court was moot because the November election had been held. Because the controversy was "capable of

repetition, yet evading review," this Court in *Moore* rejected the moot argument, and held:

> "The use of nominating petitions by independents to obtain a place on the Illinois ballot is an integral part of her elective system. [citation] All procedures used by a State as an integral part of the election process must pass muster against the charges of discrimination or of abridgement of the right to vote. [citation]
>
> * * *
>
> It is no answer to the argument under the Equal Protection clause that this law was designed to require state-wide support for launching a new political party rather than support from a few localities. This law applies a rigid, arbitrary formula to sparsely settled counties and populous counties alike, contrary to the constitutional theme of equality among citizens in the exercise of their political rights. The idea that one group can be granted greater voting strength than another is hostile to the one man, one vote basis of our representative government.
>
> . . . This law thus discriminates against the residents of the populous counties of the State in favor of rural sections. It, therefore, lacks the equality to which the exercise of political rights is entitled under the Fourteenth Amendment," 394 U.S. 814, 818-819.

The majority Illinois Supreme Court and the CCOEB's interpretation that section 10-2 required the HWP nominating petitions to contain 25,000 suburban Cook County voters' signatures for suburban Cook County Board Commissioners, and an additional 25,000 Chicago voters' signatures for Chicago Cook County

Board Commissioners required the HWP to obtain a minimum of 50,000 voters' signatures to obtain access to the Cook County ballot, twice the number of signatures required for access to the State ballot. The CCOEB (and also the four majority Illinois Supreme Court Justices) concluded that under Section 10-2, "For this [November 6, 1990] election the 25,000 figure is less and is thus applicable," and therefore 25,000 voters' signatures were required for each political subdivision. (Footnote 17 of the CCOEB decision, HWP No. 90-1126 App. D. p. 39).

Section 10-2 required that the HWP nominating petitions "contain a complete list of candidates of such party for all offices to be held in the State, or such district and political subdivision as the case may be, at the next ensuing election then to be held . . . ", the constitutional validity of which is indeed questionable but which need not be here decided. Suburban and Chicago County Board Commissioners were offices to be filed in the next Cook County ensuing November 6th election and Section 10-2 therefore required these offices to be included within the HWP nominating petitions.

The CCOEB found that the HWP nominating petitions for Cook County Sheriff, State's Attorney, Treasurer, Assessor, Cook County Board President, Chicago Cook County Board Commissioners, Clerk, Board of Tax Appeal Commissioners and Superintendent of Education contained 44,000 Chicago/Cook County voters' signatures and concluded that the HWP candidates for these county offices were validly on the November 6, 1990 Cook County ballot. The CCOEB found that the HWP nominating petitions for suburban Cook County Board Commissioners contained only 7,800 suburban Cook

County voters' signatures and were therefore insufficient and ordered the HWP suburban Cook County Board candidates removed from the November 6th ballot. The four majority Illinois Supreme Court Justices agreed and affirmed that 25,000 suburban Cook County voters' signatures were required for the HWP suburban Cook County Board Commissioners' nominating petitions, but ordered, that because the HWP nominating petitions did not contain the required full slate, the HWP and all its candidates removed from the November 6th ballot.

As previously noted, Justice Ryan's dissent concluded that the total signatures required was only 25,000. Justice Miller's dissent, in which Justice Ryan and Moran joined, likewise concluded:

> "The majority's result [requiring 25,000 suburban and an additional 25,000 Chicago voters' signatures] seemingly conflicts with the Supreme Court's decision in *Illinois State Board of Elections v. Socialist Workers* Party, (1979), 440 U.S. 173, which invalidated, on constitutional grounds, an earlier provision in Section 10-2 that effectively required a new party to present more signatures to run a candidate in the City of Chicago than state-wide. The majority's construction of the statute produces a similar disparity."

That the HWP nominating petitions for the county offices of Sheriff, Assessor, Superintendent of Schools, Treasurer, State's Attorney, Chicago/Cook County Board Commissioners and Board of Tax Appeal Commissioners contained the signatures of 44,000 Chicago/Cook County voters and the HWP nominating petitions for suburban Cook County Board Commissioners contained 7,800 suburban Cook County voters' signatures overwhelmingly

established the seriousness of the HWP and its candidates and that these signatures were clearly a manifest preliminary showing of a "significant modicum of support" for the HWP and its candidates went unchallenged by the objectors, the CCOEB and the four majority Illinois Supreme Justices. *Jenness v. Fortson*, 403 U.S. 431, 442 (1971); *Luben v. Panish*, 415 U.S. 709, 715 (1974).

In *Illinois Election Board v. Socialist Workers Party*, 440 U.S. 173 (1979), Section 10-2 required, as in the case at bar, the nominating petition of a new political party to contain the signatures of 25,000 Illinois voters in order to appear on the state-wide election ballot. However, the minimum signature requirement under Section 10-2 for a new political party's nominating petitions for offices of political subdivisions of the slate was 5% of the number of persons who voted at the previous election for offices of the subdivisions. Application of these provisions of Section 10-2 created the absurd result that the nominating petitions of a new political party candidate for a Chicago elective office required more Chicago voters' signatures than state voters' signatures on the nominating petitions of a new political party candidate for state office. The question therefore before this Court was "whether this discrepancy violated the Equal Protection Clause of the Fourteenth Amendment." This Court noted that the equal protection claim was premised on the insidious discrimination between new parties and their candidates seeking access to the state election ballot and new parties and their candidates seeking access to the Chicago election ballot. The case at bar is literally identical. This Court reiterated in *Socialist Workers Party* that:

"Restriction on access to [or denial of] the ballot burdens two distinct and fundamental rights, 'the right of individuals to associate for the advancement of political beliefs, and the right of qualified voters, regardless of their political persuasion, to cast their votes effectively: [citation] *The freedom to associate as a political party, a right we have recognized as fundamental, [citation] has diminished practical value if the party can be kept off the ballot.* Access restrictions [or denial] also implicate the right to vote because absent recourse to referendum, 'voters can assert their preferences only through candidates or parties or both: [citation] by limiting the choices available to voters, the State impairs the voters' ability to express their political preferences. And for reasons too self-evident to warrant amplification here, we have often reiterated that *voting is of the most fundamental significance under our constitutional structure.* [citation]" 440 U.S. 173, 184 (Italics ours).

This Court concluded in *Socialist Workers Party* that:

> "The signature requirements for independent candidates and new political parties seeking offices in Chicago are plainly not the least restrictive means of protecting the State's objectives. The Illinois Legislature has determined that its interest in avoiding overloaded ballots in state-wide elections is served by the 25,000 signature requirement. Yet appellant has advanced no reason, much less a compelling one, why the State needs a more stringent requirement for Chicago . . .
>
> *[We] Therefore hold that the Illinois Election Code is unconstitutional insofar as it requires independent candidates and new political parties to obtain more than 25,000 signatures in Chicago."* (Italics ours) 440 U.S. 173, 186-187.

Likewise, in the case at bar, Section 10-2 violates Fourteenth Amendment Constitutional equal protection and Sec. 10-2 is therefore also unconstitutional insofar as it required the new political HWP candidates to obtain 50,000 voters' signatures in Cook County, 25,000 from the suburbs and 25,000 from Chicago for a county office, when the section only required 25,000 voters' signatures from anywhere within the state for a state-wide office.

The removal of the HWP and all its candidates from the November 6, 1990 general election ballot and the resultant disenfranchisement of its supporting voters is unprecedented and constitutionally repugnant. *McCarthy v. Briscoe*, 429 U.S. 1317 (1976). Indeed, we note the majority Illinois Supreme Court Order removing the HWP and all its candidates from the November 6, 1990 ballot is contrary and repugnant to even that Court's own decision in *Anderson v. Schneider*, 62 Ill. 2d 165 (1977).

In *Schneider*, the Electoral Board struck the nominating petition of an entire party and of its candidates from the ballot upon determining that one of the party's candidates was legally ineligible. The Electoral Board held that because the candidate was ineligible, the party failed to nominate the required entire slate of candidates and all the nominating petitions were therefore invalid. The Illinois Supreme Court ruled:

> "The sanction imposed by the Electoral Board and the Circuit Court was a harsh one. It affects not only the rights of the candidates but those of the voters. Nor have the defendants suggested any reason why such a sanction is necessary to protect the integrity of the electoral process.

It is now well recognized that the power of the state in determining voter qualifications and the conduct of elections must be exercised in a manner consistent with the Equal Protection and Due Process Clauses of the Fourteenth Amendment ~~and~~ with the interrelated right to associate for political purposes which is guaranteed by the First Amendment.

That the process of denying a candidate a place on the ballot because of the ineligibility of other candidates is constitutionally vulnerable is particularly manifest from *Lubin v. Panish,* 415 U.S. 709 (1974).

Certainly there is no interest necessary to preserve the integrity of the ballot justifying the removal of the party and all of its candidates from the ballot because of want of eligibility of a single candidate.

> *We hold Sec. 10-2 confers no authority for the removal of all of the candidates because one is unqualified."* 67 Ill. 2d 165, 171, 174, 175, 176. (Italics ours).

Why the Illinois Supreme Court majority Justices rejected and refused to follow, apply, discuss or even cite its own *Schneider* decision in the case at bar is unrevealed. It is also unprecedented.

Since *Schneider,* 1977, the Illinois legislature has not designated the sanctions or remedy to be imposed because of a political party's failure to completely comply with the full slate requirement or other requirements of the election code. To leave such unbridled remedies to the undefined, arbitrary and whimsical determinations of the numerous Illinois Electoral Boards, Illinois reviewing Circuit and Appellate Courts, and the Illinois Supreme Court violate fundamental constitutional due process and equal

protection. Parenthetically, we note that both the Democratic and Republican Parties regularly and frequently, throughout the State, in varying elections fail to slate candidates of such party for all offices to be filled in such elections.

The decisions requiring 50,000 Chicago and Cook County signatures and removing the HWP and its candidates from the ballot must be reversed.

II.

THE ORDER BARRING USE OF THE HWP NAME IS WITHOUT ANY EVIDENTIARY SUPPORT, IS CONTRARY TO THE UNCONTRADICTED EVIDENCE, VIOLATES THIS COURT'S RULINGS IN *SOCIALIST WORKERS PARTY* AND *MOORE* AND SAID ORDER IS THEREFORE VOID AND MUST BE REVERSED.

The Illinois Supreme Court majority order barring use by the HWP of its party name in expanding beyond the City of Chicago into suburban Cook County is completely contrary to the uncontradicted evidence, and additionally violates petitioners' first, fourteenth and fifteenth amendment constitutional rights.

Section 10-5 provides that a new political party petition for nominations:

> "[s]hall not bear the same name as, nor include the name of any established political party as defined in this Article. This prohibition does not preclude any established political party from making nominations in those cases in which it is authorized to do so."

The Objectors' third objection alleged (J.A. 14): "that the 'HWP' is an 'established political party' in the City of

Chicago * * * The [HWP] nomination papers at issue bear the name of an already 'established political party,' the 'HWP', and as such violates the Section 10-5 prohibition against a new political party bearing 'the same name' of an established political party."

During the evidentiary hearing on the objections before the CCOEB, the attorney for the HWP candidates answered this third objection of the objectors as follows, (Vol. 8, CCOEB Tr. pp. 7-12, 16-17, August 21, 1990).

> "Atty Thomas: Section 10-5 [Ch. 46, Ill. Rev. Stat.]. The Illinois Election Code, which basically says that the prohibition against the use of the same name is not prohibited if an established party authorizes the use of that name. And this is exactly what we have here in this situation. We have an established party in the city which seeks to expand its party to run at the county level, and what that established party has done is authorized the use of the name of the established city-wide party to establish it county-wide . . . There was no other provision within the election code that would allow the Harold Washington Party, which is a city-wide party to run a county-wide slate. So, therefore, this was the only means that we had in order to expand the party to the county."

Certainly the Illinois Democratic-Republican Party legislators cannot validly restrict a competing third party from expanding from the Chicago municipality into Cook County by merely failing to provide by legislation the process or procedure for such expansion by the third party.

The HWP attorney further advised and argued to the CCOEB, as, follows:

> "In the case of the HWP, in this situation, it is an established party at the city level which is now expanding to run candidates at the county level. THESE ARE THE SAME PEOPLE IN THE HWP WHO RAN A CITY-WIDE SLATE OF CANDIDATES FOR THE MAYOR OF THE CITY OF CHICAGO. THIS IS THE SAME PARTY THAT IS NOW EXPANDING TO RUN A SLATE OF CANDIDATES ON THE COUNTY-WIDE LEVEL. SO THERE IS NOT A CHANGE IN PEOPLE. THERE IS NOT A CHANGE IN NAME. IT IS, IN FACT, THE SAME PARTY . . . ' " (emphasis added.)

Thereupon, extensive colloquy occurred between the CCOEB members and the objectors' attorney (Vol. 8 CCOEB Tr. pp. 16-45, 8/21/90), during which at no time did the objectors' attorney contend, urge, assert, or argue the dual HWP name contention as a ground or basis for the objections to the HWP nominating petitions. Conversely, the Objectors, attorney then expressly rejected reliance on such grounds, in the following dialogue, (Vol. 8 CCOEB Tr. pp. 25-36, 8/21/90):

> "Objectors' Attorney: If we had those [HWP records] we could tell whether Mr. David Reed, who says in his affidavit that he was authorized to proceed, we'll then be able to find out if that's true. BUT I'LL BE CANDID WITH YOU, I DON'T WANT TO GO INTO THAT . . . (emphasis added.)
>
> CCOEB member Pucinski: Assuming that there were individuals who authorized this Harold Washington Party to expand and make nominations in the county, your argument is that authorization still wouldn't be effective . . .
>
> Objectors' Attorney: That's right. It wouldn't make any difference anyway. Wouldn't make any difference anyway."

Alderman Timothy Evans at the request of the CCOEB appeared before the CCOEB on August 24, 1990, at which time he was sworn and CCOEB member Pucinski interrogated him as follows: (Vol. 8 CCOEB Tr. pp. 4-5, 8/24/90)

> "CCOEB member Pucinski: Alderman Evans, * * * YOUR TESTIMONY WILL SETTLE ONE OF THE CENTRAL ISSUES IN THE WHOLE PROCESS, WHICH IS THE AUTHORIZATION OF THE HAROLD WASHINGTON PARTY BEFORE US TO USE THAT [HWP NAME] ON THEIR PETITIONS AS THE BASIS FOR THEIR PARTY AND THEIR CANDIDATES. SO, THE CENTRAL QUESTION IS, DO YOU AUTHORIZE THE USE OF THE NAME HAROLD WASHINGTON PARTY FOR THIS PURPOSE?
>
> Mr. Evans: YES, I DO AUTHORIZE THE USE OF THE NAME, HAROLD WASHINGTON PARTY, FOR EXPANSION INTO THE COUNTY.
>
> CCOEB member Mr. Kusper: So that, to try to sum this up, THE CITY OF CHICAGO HAROLD WASHINGTON PARTY DOES GIVE ITS PERMISSION AND AUTHORIZES THE USE OF THE HAROLD WASHINGTON PARTY NAME TO EXPAND IN SUBURBAN COOK?
>
> Mr. Evans: "YES, THAT IS CORRECT." (emphasis added.)

Predicated on these foregoing unrebutted representations and testimony, the CCOEB made the following factual findings and decision: HWP 90-1126, App. D, pp.33-36.

> "The Board was concerned that confusion would exist if the Chicago HWP was indeed, not the same as the new political party in the County, namely the HWP. A QUESTION THAT NEEDED TO BE RESOLVED WAS WHETHER THE NEW HWP WAS ONE AND THE SAME AS THE CHICAGO HWP INVOLVING THE SAME PEOPLE . . . Evans testified that he gave permission for use of the name prior to the County HWP petitions being circulated and he is the only person to testify in these regards . . . HERE THE EVIDENCE DEMONSTRATES THAT IT IS THE SAME HWP WHICH IS REACHING OUT TO EXPAND INTO NEW POLITICAL TERRITORY . . . Thus, the motion [of petitioners] to dismiss the objection that the name Harold Washington Party could not be used by the candidates is granted." (emphasis added).

In spite of this foregoing uncontested and uncontradicted testimony and colloquy, and the CCOEB's foregoing expressed findings the four majority Illinois Supreme Court Democratic Party Justices held, HWP 90-1126, App. B, p. 3:

> "This Court, by majority vote, holds that the petitioner's use of the Harold Washington Party name in their [nominating] Petitions did violate the provisions of Section 10-5. Accordingly the holding of the [CCOEB and] The Circuit Court on this question is hereby reversed as erroneous."

This Illinois Supreme Court majority ruling is (1), completely void of any evidentiary support in the record, and (2), diametrically repugnant to the uncontroverted evidence. The Illinois Supreme Court majority justices offer no rationale or reasoning for the ruling and no articulation whatsoever of any state interest to be protected by depriving an established political party the use of its name in expanding. As noted by Illinois Supreme

Court Justice Miller in his dissenting opinion, HWP 90-1126, App. B. pp. 10-14:

> "It is clear, then, that the statutory scheme contemplates that a political party might become an established entity in one district or political subdivision of the state but not in others . . . Because the Harold Washington Party is an established entity only in the City of Chicago, Article X [of the Illinois Election Code] does not, by its literal terms, prohibit the present candidates from running for county offices under the same party name.
>
> The purpose of the statutory limitation on the names that may be used by a political party are to prevent a new party from gaining ballot access by unfairly piggy backing on the successes of an established party and to avoid confusion. It is clear in the present case that the purpose of the legislation would not be undermined by allowing the county candidates to run under the Harold Washington Party name. Thus, after today's decision, it is not clear how a new party may go about expanding from one district to another."

There is no state interest nor any reason that justifies the sections convoluted interpretation by the Illinois Supreme Court majority justices that in effect makes impracticable, if not impossible, any alternative to the major parties. See, *Storer v. Brown*, 415 U.S. 724, 746 (1974). "The right to vote is heavily burdened if that vote may be cast only for one of two parties at a time when other parties are clamoring for a place on the ballot." *William v. Rhodes*, 393 U.S. 23, 31 (1968). In *Socialist Workers Party* this Court held that there must be a compelling reason to justify the imposition of such burdens

on political parties, as in the instant case. A constitutionally permissible justification must be established to warrant the oppressive ballot status prerequisite in the case at bar, but no such justification exists. By denying the use of its party name in expanding from a city municipal party to a county-wide party, the Illinois Supreme Court majority justices impermissibly restricted the availability of political opportunity to the HWP, its candidates and the party's voters and supporters. The Illinois Supreme Court's majority decision refusing to allow the HWP to use its name for geographical expansion purposes cannot constitutionally stand. Such refusal is clearly violative of and repugnant to the 1st Amendment Constitutional right of political association, the 14th Amendment Constitutional rights to due process and the equal protection of the law, and the 15th Amendment Constitutional right to the franchise. The decision must therefore be reversed.

CONCLUSION

The decisions of the CCOEB and the four majority Illinois Supreme Court Justices construing Section 10-2, Chapter 46, Ill. Rev. Stat. 1989, The Illinois Election Code, as requiring that the HWP nominating petitions for suburban Cook County Board Commissioners contain 25,000 suburban Cook County voters' signatures are erroneous and we pray reversal of said decision. Likewise, the decision of the CCOEB removing the HWP candidates for suburban Cook County Board Commissioner, and the decision of the four majority Illinois Supreme Court Justices removing the HWP and all its candidates for all the

Cook County offices from the November 6, 1990 ballot on the ground that the HWP nominating petitions for suburban Cook County Board Commissioners did not contain 25,000 suburban Cook County voters' signatures, and that the HWP nominating petitions therefore did not contain a full slate, are erroneous and we also pray reversal of these decisions.

Respectfully submitted,

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